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From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

To:

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NOTIFICATION OF TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(PCT Rule 71.1)

DOCKETED

JAN 26 2006

Date of mailing
(day/month/year)

18.01.2006

Applicant's or agent's file reference

K0502.70037

IMPORTANT NOTIFICATION

International application No.

PCT/US2004/026279

International filing date (day/month/year)

13.08.2004

Priority date (day/month/year)

10.09.2003

Applicant

KEURIG, INCORPORATED et al.

Confirmation

Docketing

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary report on patentability and its annexes, if any, established on the international application.

2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.

3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.

4. REMINDER

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

The applicant's attention is drawn to Article 33(5), which provides that the criteria of novelty, inventive step and industrial applicability described in Article 33(2) to (4) merely serve the purposes of international preliminary examination and that "any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed inventions is patentable or not" (see also Article 27(5)). Such additional criteria may relate, for example, to exemptions from patentability, requirements for enabling disclosure, clarity and support for the claims.

Name and mailing address of the international preliminary examining authority:



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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference K0502.70037	FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/US2004/026279	International filing date (<i>day/month/year</i>) 13.08.2004	Priority date (<i>day/month/year</i>) 10.09.2003	
International Patent Classification (IPC) or national classification and IPC B65D81/00			
Applicant KEURIG, INCORPORATED et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 20px;">a. <input type="checkbox"/> <i>sent to the applicant and to the International Bureau</i>) a total of sheets, as follows:</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p style="margin-left: 20px;">b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input checked="" type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 08.07.2005		Date of completion of this report 18.01.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Vesterholm, M Telephone No. +49 89 2399-2541 <div style="text-align: right;">  </div>	

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/US2004/026279

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-4 as originally filed

Claims, Numbers

1-12 as originally filed

Drawings, Sheets

1/3-3/3 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

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Box No. II Priority

1. ☒ This report has been established as if no priority had been claimed due to the failure to furnish within the prescribed time limit the requested:
- ☒ copy of the earlier application whose priority has been claimed (Rule 66.7(a)).
 - ☐ translation of the earlier application whose priority has been claimed (Rule 66.7(b)).
2. ☐ This report has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rule 64.1). Thus for the purposes of this report, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-12
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-12
Industrial applicability (IA)	Yes: Claims	1-12
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

Re Item V.

1. The following documents are referred to in this communication:
D1: US-A-5 840 189 (SYLVAN JOHN E ET AL) 24 November 1998
D2: CH-A-688 686 (COFFEA SA) 15 January 1998
D3: US-A-5 298 267 (GRUENBACHER DANA P) 29 March 1994

2. INDEPENDENT CLAIM 1

- 2.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claim 1 does not involve an inventive step in the sense of Article 33(3)PCT.

- 2.1.1 Document D1, which is considered to represent the most relevant state of the art to the subject matter of claim 1, discloses (the references in parenthesis applying to this document):

A beverage filter cartridge (10) comprising:

an impermeable cup-shaped container (12) having a substantially flat first bottom (12b) and a first side wall (12a) diverging upwardly from said first bottom (12b) to a collar (20) surrounding a top opening (18);
a filter element (14) having a substantially flat second bottom and a second side wall diverging upwardly from said second bottom to an upper rim (26), said filter element (14) being received in said container (12) with said second bottom spaced both inwardly from said first side wall (12a) and vertically from said first bottom (12b), and with said upper rim (26) joined at a peripheral juncture to the interior of said first side wall (12a), the interior of said container (12) thus being subdivided by said filter element (14) into a first chamber accessible via said top opening (18), and a second chamber disposed between said first and second bottoms;
a beverage medium received in said first chamber via said top opening (18);
and
an impermeable cover (16) sealed to said collar (20) and closing said top opening (18), said cover (16) being piercable to admit liquid into said first chamber for impulsion with said beverage medium to produce a beverage, said filter element (14) being permeable to accommodate the flow

therethrough of said beverage for delivery to said second chamber, and said first bottom (12b) being piercable to accommodate an outflow of said beverage from said cartridge (10) (see Fig. 4, and col. 2, line 22 - col. 4, line 26).

All these features are equally known from the prior art document D2 (see in particular Fig. 5 and col. 5, lines 34 - 55).

- 2.1.2 The subject-matter of independent claim 1 differs from the disclosure of D1 in that:

said second side wall coacting with the interior of said first side wall defines exit channels leading from said peripheral juncture to said second chamber.

- 2.1.3 The problem to be solved by the present invention may therefore be regarded as "to improve the flexibility of the filter material during the forming of the conical shape".

- 2.1.4 In view of D3 the solution proposed in claim 1 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the following reasons:

the skilled person starting from D1 or D2 and facing the problem posed would notice immediately from D3 (see Fig. 1) that the filter according to D3 is easier to handle during the forming process and thus, he would combine the teaching of D3 with the teaching of D1 or D2 and arrive at a similar structure as claimed in independent claim 1 without exercise of any inventive skills in order to solve the problem posed. The proposed solution in independent claim 1 cannot thus be considered inventive (Article 33(3) PCT).

3. INDEPENDENT CLAIM 12

- 3.1 The present application does not meet the criteria of Article 33(1) PCT, because the subject matter of claim 12 does not involve an inventive step in the sense of Article 33(3)PCT.

- 3.1.1 Document D1, which is considered to represent the most relevant state of the art to the subject matter of claim 12, discloses (the references in parenthesis applying to this document):

A beverage filter cartridge (10) comprising:

a cup-shaped outer container (12) having a side wall and a bottom (12a, 12b); and

a cup-shaped filter element (14) having a side wall and a bottom; said filter element (14) being arranged to subdivide the interior of said container (12) into a first chamber inside said filter element (14) and a second chamber located between the bottom of said filter element (14) and the bottom of said container (12), said filter element (14) having an upper rim (26) joined to the container side wall (12a) at a peripheral juncture (see Fig. 4, and col. 2, line 22 - col. 4, line 26).

All these features are equally known from the prior art document D2 (see in particular Fig. 5 and col. 5, lines 34 - 55).

- 3.1.2 The subject-matter of independent claim 12 differs from the disclosure of D1 in that:

and said filter side wall having exterior channels that face said container side wall and that lead downwardly from said peripheral juncture to said second chamber.

- 3.1.3 In view of D3 the solution proposed in claim 12 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the same reasons as the independent claim 1 (see 2.1.3 and 2.1.4).

4. DEPENDENT CLAIMS 2-11

Dependent claims 2-11 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step (Article 33(3) PCT).

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REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

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- 4.1 The additional feature of dependent claim 2 cannot be used as a basis for a claim which would meet the requirements of Article 33(3) PCT because the additional feature is known from D1 (see Fig. 4).
- 4.2 The additional features of dependent claims 3, 4, 9 and 10 cannot be used as a basis for a claim which would meet the requirements of Article 33(3) PCT because all of their additional features are known from D3 (see Fig. 1 and 4A, and col. 10, lines 14 - 24).
- 4.3 The additional features of dependent claims 5, 6, 7, 8 and 11 are considered merely to be obvious design alternatives for the skilled person which he would consider without taking an inventive step (Article 33(3) PCT).

Re Item VII.

5. Independent claims 1 and 12 are not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D1) being placed in the preamble (Rule 6.3(b)(i) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).
6. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

Re Item VIII.

7. The vague and imprecise statement in the description on page 4, lines 27 - 28, implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them.